

**HAGENS BERMAN**

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August 6, 2013

VIA ECF

The Honorable Jennifer C. Boal
District of Massachusetts
John Joseph Moakley Federal Courthouse
1 Courthouse Way, 5th Floor
Boston, MA 02210

Re: *In re New England Compounding Pharmacy, Inc. Products Liability Litigation*,
Master Dkt.: 1:13-md-02419-FDS; MDL No. 2419

Dear Judge Boal,

I write on behalf of the Plaintiffs' Steering Committee to address how to move forward with the subpoena objections referred to Your Honor in Judge Saylor's August 1, 2013 order.¹

The PSC has issued approximately ninety subpoenas to pain clinics, doctors, and/or healthcare providers. Judge Saylor entered an order requiring objections to be filed in, and centrally enforced by, this Court.² Thirty-six subpoena recipients have filed motions to quash or other objections.³

1. Neurosurgical Group of Chattanooga d/b/a Chattanooga Neurosurgery and Spine [Dkt nos. 218 and 307]
2. St. Thomas Outpatient Neurosurgical Center, LLC [Dkt. nos. 219 and 305]
3. Specialty Surgery Center, PLLC [Dkt. nos. 220 and 308]
4. Howell Allen, A Professional Corporation [Dkt. nos. 221 and 304]
5. Donald Jones, M.D. [Dkt. nos. 222 and 306]
6. Liberty Industries, Inc. [Dkt. nos. 231 and 323]
7. Southeast Michigan Surgical Hospital [Dkt. nos. 236 and 298]

¹ Dkt. no. 370, Order on Motions to Quash Subpoenas to Non-Party Healthcare Providers.

² Dkt. no. 193, Order on Central Enforcement of Subpoenas.

³ See Attachment 1, updated chart of subpoena objections originally submitted as Exhibit B to the Plaintiffs' Steering Committee's Consolidated Response to Subpoena Objections, Dkt. no. 325.

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8. Michigan Pain Specialists [Dkt. nos. 241 and 347]
9. Thorek Memorial Hospital [Dkt. nos. 244 and 283]
10. Erlanger Health Systems, Inc. [Dkt. nos. 246 and 256]
11. High Point Surgery Center [Dkt. nos. 365 and 366]
12. Premier Orthopaedic and Sports Medicine Associates of Southern New Jersey, LLC, t/a Premier Orthopaedic Associates, Premier Orthopaedic Associates Surgical Center, LLC and Kimberly Yvette Smith-Martin, M.D. [Dkt. nos. 252, 291 and 357]
13. Baltimore Pain Management Center [Dkt. nos. 254 and 281]
14. Carilion Surgery Center New River Valley, LLC [Dkt. no. 257]
15. North Carolina Orthopaedic Clinic [Dkt. no. 259]
16. HCA Health Services of Tennessee, Inc., a/k/a Centennial Medical Center [Dkt. no. 260]
17. Surgical Park Medical Center [Dkt. no. 261]
18. Martin Kelvas, Howell Allen Clinic, A Professional Corporation, and St. Thomas Outpatient Neurosurgical Center, LLC [Dkt. no. 266]
19. South Bend Clinic, LLP [Dkt. nos. 269 and 270]
20. Inspira Health Network, Inc. and Inspira Medical Centers, Inc. [Dkt. no. 273]
21. Surgery Center of Wilson, LLC [Dkt. nos. 275 and 318]
22. Forsyth Street Ambulatory Surgery Center, LLC [Dkt. no. 279]
23. Neuromuscular and Rehabilitation Associates of Northern Michigan [Dkt. nos. 288 and 348]
24. Rochester Brain and Spine Neurosurgery & Pain [Dkt. nos. 314, 358, 359, and 360]
25. Insight Health Corp. [Dkt. nos. 300]
26. Pain Associates of Charleston, LLC d/b/a Intervene MD [Dkt. no. 372]

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27. Dr. O'Connell's Pain Care Center and Dr. O'Connell's Pain Care Center, Inc. [Dkt. nos. 311 and 353]
28. Greenspring Surgery Center [Dkt. no. 303]
29. Pain Consultants of West Florida [Dkt. nos. 317 and 355]
30. Ukiah Valley Medical Center [undocketed]
31. Interventional Spine and Sports Medicine, PC [Dkt. nos. 345 and 354]
32. Encino Outpatient Surgery Center, LLC [Dkt. nos. 338 and 339]
33. Harford County Ambulatory Surgery Center, LLC [Dkt. nos. 342]
34. Allegheny Pain Management, P.C. [Dkt. no. 334]
35. Sahara Outpatient Surgery Center [Dkt. no. 368]

Judge Saylor heard oral argument on most of these objections during the July 18, 2013 status conference. Judge Saylor ordered, from the bench, that all objections concerning the jurisdiction or centralized authority of the Court to issue and enforce the subpoenas would be denied.⁴ On August 1, 2013, Judge Saylor issued an order granting subpoena recipients' motions to quash to the extent that a subpoena seeks to obtain patient medical records or other patient information as to individuals who are not parties to any action presently pending in the MDL court for the purpose of providing notice to possible claimants in the bankruptcy court.⁵ Judge Saylor's order referred the remainder of the issues raised in the motions to quash to Your Honor.⁶

A copy of the Plaintiffs' Steering Committee's consolidated response to subpoena objections, including the original chart categorizing the objections made by each objector, is attached hereto as Attachment 2. An updated version of the chart is attached as Attachment 1. We have not included copies of the objectors' submissions, but will do so at the Court's request (hard copies and/or digital).

⁴ See Dkt. No. 340, Electronic Clerk's Notes for July 18, 2013 status conference ("the Court ordered that all objections concerning the jurisdiction or centralized authority of the Court to issue and enforce the subpoenas will be DENIED").

⁵ Dkt. No. 370, Order on Motions to Quash Subpoenas to Non-Party Healthcare Providers.

⁶ *Id.*

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We respectfully request that Your Honor schedule a hearing to address the remaining objections or, alternatively, discuss how best to proceed in resolving these objections. The next MDL status conference is scheduled for August 9, 2013 at 1:30, should another time that day prove convenient.

Sincerely,

/s/ Kristen Johnson Parker

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Plaintiffs' Lead Counsel

CERTIFICATE OF SERVICE

I, Kristen Johnson Parker, hereby certify that I caused a copy of the foregoing letter to be filed electronically via the Court's electronic filing system. Those attorneys who are registered with the Court's electronic filing system may access these filings through the Court's system, and notice of these filings will be sent to these parties by operation of the Court's electronic filing system.

Dated: August 6, 2013

/s/ Kristen Johnson Parker

Kristen Johnson Parker, BBO # 667261